Socialism and The Law

The Basis and Practice of Modern Legal Procedure and its Relation to the Working Class

By George Allan England, A. M.

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—GOLDSMITH

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In approaching, from a Socialist standpoint, the consideration of the enactment and administration of law, the fundamental requisite is to disabuse our minds of all conventional and long-established concepts regarding its sanctity, inviolability, even-balanced impartiality and universal application to every class and condition of mankind. The hoary maxim that "All men stand equal before the law" must be immediately discarded as useless and mischievous rubbish; and, instead of fine-spun theories and utopian dreams, we must grapple with stern realities, cold facts and unshakable even though disconcerting conclusions.

Instead of copy-book aphorisms and pleasing though inaccurate concepts, the seeker after truth must face once for all the situation as it really exists today and has always existed, ever since classes were formed in society and laws were formulated by masters to control slaves—a situation thus well summed up: "Law is the will of the master class, designed to keep the masses in subjection."

Socialists contend, and back their contention with an overwhelming mass of facts, that society is composed of classes, always in more or less open conflict, and that the law is used by the master class as its most powerful weapon in maintaining its rule and in checkmating any move on the part of the subject class to assume control of affairs economic or political. Whether under despotism,

a limited monarchy or a republic, the same factors are perpetually at work, the same forces constantly contending. The setting of the battle varies, true, in different lands; and its accessories, so to speak, are modified under various forms of government; but always and everywhere, at last analysis, we find the same essential struggle going on, and always—if we observe the facts of life, unbiased by preconceived notions of "eternal justice" and "equal rights for all,"—we see the legal machinery operating in the interests of the master-class. Law is a sword, its handle always in the grip of Capital, its point perpetually directed toward the worker's breast.

Some Cases In Point.

Enough, for the present, of generalizations. Let us examine a few of the *causes celebres* that have re-echoed through the courts of our land and found their reflexes in decisions directly affecting, first or last, every man, woman and child within its borders. Let us analyze some of these cases, sound their motives lay bare the springs of action that have controlled "the gowned and black-robed puppets of bench and bar." Then, perhaps, we shall possess some data to guide us in deciding whether or not the Socialist interpretation of law as a class-instrument be correct or otherwise.

If we consider with a critical eye the record of the Supreme Court in some of its more important decisions regarding the relative importance of property and human life, that court will not seem elevated above the

ordinary level of mankind in virtue and intelligence.

It is not possible for us of the present commercial times to conceive of the storm of indignation which broke loose when that court (or rather John Marshall, for he was the court) first declared an act of Congress unconstitutional and void. Unfortunately, the decision in this first case, Marbury vs. Madison, was purely negative—the refusal to grant a mandamus—and there was nothing for President Jefferson or Congress to resist. But the claim had been made, by the court, of the right to exercise the veto power and the precedent had been established. Nothing since the Alien and Sedition laws had so stirred the country. Everywhere, except in monarchico-federalist circles, a great wave of revulsion rolled over the country. Learned judges pronounced the decision usurpation; state legislatures took the matter in hand to see what could be done to curb the unbridled audacity of the courts; John Randolph submitted an amendment to the Constitution providing that, "the judges of the Supreme Court and all other courts of the United States shall be removed by the President on the joint address of both houses of Congress."

In 1807-1808, motions were made in both branches of Congress to amend the Constitution so that all United States judges should hold office for a term of years, and should be removed by the President on address by two-thirds of both houses. This proposition, though lost, was supported by the legislatures of Pennsylvania and Vermont, by the House of Delegates of

Virginia and one branch of the legislature of Tennessee.

In 1831 a final struggle was made in Congress to change the tenure of federal judges from life to terms of years. The attempt failed; but the measure had 61 supporters in the house.

Today, a corrupted press and a servile population bare the head and bend the knee before this court as if in the presence of the annointed of God on earth! Yet the Constitution, which defines specifically the power of this court, neither grants, implies or contemplates the exercise of the tremendous power of declaring null and void an act of Congress.

On March 6, 1857, the famous Dred Scott decision was handed down by the Supreme Court. The court held—two of the nine judges dissenting—that Scott, being a slave, and hence, not a citizen, was not entitled to bring an action in a United States court. They went further, and held that, the territories being equally open to all people, and slaves being recognized as property by the Constitution of the United States, the slave-owner had the same right to take his slave there and be protected in his ownership as the man from the free state had to take his horse and be protected in his possession; that Congress could not deprive the slave owner of his right; and that, therefore, the Missouri Compromise was unconstitutional and void. This decision meant, in effect, that—contrary to the spirit and purpose of the Constitution—the black man had no rights that the white man was bound

to respect. Here, clearly, property-rights were defended by the highest legal tribunal in the land, at the expense of human rights, in a judgment that sustained every claim made by the South. The North was stunned. The reversal of the decision was effected only at a cost of a million lives and an incalculable hemorrhage of treasure.

Great lawyers, like Fessenden, were scathing in their criticisms of the court. In a thousand pulpits prayers were offered up to save the country from the iniquitous decisions of the judges. The press in the North was loaded with denunciations. And the people of the free states, those in the mills and shops and on the farms, joined in the chorus. All that was said by the representative anti-slavery men was only a putting into articulate speech and language of what they felt profoundly in their minds and hearts. The present generation has been educated differently, thanks to the press, the pulpit, the politicians, the universities, the colleges, private and public schools and current popular literature. In accord with this teaching they grovel on their bellies in the dust before a court like a Thibetan before the Dalai Lama.

Chattel slavery is dead and forever gone; but the Supreme Court, true to its instincts and traditions has now become the citadel of the consolidated power of capital.

On the 9th of March, 1857, Hannibal Hamlin—afterwards Vice-President with Mr. Lincoln—following the path blazed out by Mr. Seward, and speaking of the Supreme Court, remarked as follows:

"We make the laws; they interpret them; but it is not for them to tell us what are the limits within which we shall confine ourselves in our action. Of all despotisms upon earth, the despotism of a judiciary is the worst."

The South stood by the Supreme Court in those days because it was the ally of slavery; the money power stands by it today, because it is the ally of capital.

It was just half a century from the time Jefferson began his attacks on the Supreme Court, to the revival of these attacks, in the Dred Scott decision. Another half a century has elapsed since that decision to the present time. But outside of Socialist ranks, we hear no protests today when the usurpations of the Supreme Court have a wider scope and deeper import than ever before. We have lost our breed of noble blood. The attorneys of Standard Oil, of the railroads, and of the trusts, have taken their places. Both houses of Congress are as dumb as oxen. And the people? They stand as quiet and submissive as sheep under the hands of their shearers.

Still Further Cases.

The class-character of our legal procedure and executive machinery was obvious in the breaking of the famous A. R. U. strike in Chicago, during 1894. Not only was Eugene V. Debs enjoined by Judge Grosscup from exercising his constitutional right of free speech, and jailed for 6 months at Woodstock for daring to de-

fend that right, but Cleveland in an arbitrary and brutal manner, over the protests of Mayor Harrison of Chicago and Governor Altgeld of Illinois, threw in the federal troops to break the strike. Pullman and his associates were handled with kid gloves. They represented Capital.

During Cleveland's second administration, a single judge, Shiras, reversed the opinion of the Supreme Court, and nullified the income-tax law. The "guess" of this one man—a guess no better than yours or mine —saved uncounted millions of dollars to the propertied class in America and laid additional and grievous burdens on some 75 millions of plain people. The income tax had been imposed by the will of the people as a whole, acting through Congress, the Senate and the presidential signature. Shiras said "No," and the collective will of America collapsed like a bursted bubble.

The people of Colorado, in 1903, by a majority of over 46,000 declared for the eight-hour law for labor in the mines. The elected representatives of the state refused to obey that mandate and enact that law.

In Oregon, the people, by an overwhelming popular vote declared for direct legislation; but the state courts declared that such legislation could not be written on the statute books.

The famous Moyer-Haywood case possessed prime importance largely because the Supreme Court, with only Justice McKenna dissenting, declared in effect that kidnapping of labor leaders was constitutional, using these words:

"Looking first at what was alleged to have occurred in Colorado touching the arrest of the petitioner and his deportation from that state, we do not perceive that anything done there, however hastily or inconsiderately done, can be adjudged to be in violation of the Constitution or laws of the United States.

"Even if it be true that the arrest and deportation of Pettibone, Moyer and Haywood from Colorado was by fraud and connivance, in which the government of Colorado was a party, this does not make out a case of violation of the right of the appellants under the constitution and laws of the United States."

To test the validity of this grave dictum, if applied not to members of the working class but to a capitalist, Fred D. Warren, editor of the "Appeal to Reason," offered a reward of $1000 for the kidnapping of Ex-Governor Taylor, of Kentucky, and his return to the Kentucky authorities. Taylor was a fugitive from justice, hiding in Indiana, and wanted on a murder charge. A standing reward of $100,000 for his return was kept in force by the State of Kentucky. Despite these facts, Warren was arrested and prosecuted on a charge of sending incendiary, threatening and defamatory matter through the mails.

The Famous "Warren Case."

One of the most celebrated test-cases ever tried in America resulted. Its details would consume space far beyond our present limits. Be it remembered, however, that after incredible delays, subterfuges and annoyances, Warren was convicted and sentenced to six months in jail and to pay a fine of $1500.

During the trial at Fort Scott, before Judge Pollock, and later at the appeal in St. Paul, before Judge Hook, Warren enunciated more clearly than has ever elsewhere been done, the class-character of the law and the courts as administered by and for Capitalism. Through the columns of the "Appeal" and by means of reprints in hundreds of other papers, he was able to spread widely a true understanding of modern legal procedure. A few quotations are essential.

During the first speech he said:

"Would the Supreme Court hold to its opinion that kidnapping was not a crime if the victim were a member of the Republican party and a representative of the capitalist class?

"My arrest and conviction is the first instance on record where a man was prosecuted for attempting to bring to the bar of justice an indicted fugitive charged with the crime of murder.

"There must be some reason why I alone of the thousands of men who, according to the rule of this court and the opinion of the district attorney and his assistant, have committed substantially the same act, should be singled out and marked for prosecution.

"The reason is not hard to find. Society today is divided into two classes. On the one side we find the work people—men, women and children who have no means of obtaining a livelihood but by their hard labor. On the other hand we find a relatively small group of men who own the land, and the tools which these people must have access to if they are to live. It is the primary if not the sole purpose of the men who own

this productive property to obtain as large profits as possible, while on the other hand the work people strive constantly to increase their wages. This creates a class conflict.

"The slave master built up a civil and political system which protected his right of property in the bodies of his slaves and the wealth they produced. Prior to 1860, the laws enacted by Congress and by most of the several states, backed by the decisions of federal and state courts, had for their object the protection of the slave master in his right of ownership of men, women and children. The man who dared raise his voice in protest against the exploitation of the black man was branded as a traitor to his country. If he attempted to speak he was thrown into jail, and if he attempted to print a newspaper voicing his sentiments his press was destroyed and he was mobbed and murdered.

"What was true in the two revolutionary periods which marked the disappearance of a political system based on kingcraft and a political system based on chattel slavery is true today.

"The men and the newspapers that have espoused the cause of men, women and children who work in the fields, factories and mines of this nation are marked for persecution, as were the Revolutionary and Abolition editors before them.

"The courts today, as prior to 1860, are with the owning and ruling class. Daily this fact is becoming more apparent. One has only to refer to the long list of decisions in which the interests of labor and capital are opposed, to verify this statement. The black-list has been legalized and the boycott outlawed. The injunction has been used with telling effect in labor

controversies to terrorize and crush the men who work, while it has proved ineffective and of no avail when directed against great capitalist interests.

"Our colonist forefathers, imbued with the high ideals embodied in their immortal Declaration, shouldered their guns and shot to death the divine right of kings, and then the cunning enemies of democracy raised in its stead the Supreme Court, with its many federal arms reaching out into all the states of the Union.

"The Supreme Court has become in fact the reigning monarch of the American people. No measure of relief demanded by voters of this nation enacted into law by their elected representatives and signed by the President may become operative without its judicial sanction. At the command of the lords of privilege any obnoxious law is promptly declared unconstitutional.

"The Supreme Court of the United States has today more real power over the people than is vested in any monarch of the old world.

"The late Senator Hanna boasted that the courts are maintained to buttress property rights.

"President Taft in his Hot Springs (Va.) speech expressed a decided opinion upon the same question in referring to the inability of the poor to cope in the courts with men of wealth. With expressions like these from men of prominence, do you wonder that there is a growing distrust on the part of the poor people of this nation that the courts are against them?

"In the western district of New York, of thirty cases decided in favor of injured employees twenty-eight were reversed in favor of the master class by the higher courts. United States District Attorney Sims of Chicago was waging a vigorous fight against

the white slave drivers, and when victory was almost within his grasp his hand was paralyzed by a decision of the Supreme Court, which virtually put an end to the prosecution of that unspeakable infamy. There are property interests involved in the wholesale debauchery of young girls, and these property interests must be safeguarded at whatever cost. As for the girls, they are the daughters of the working class and in point of value are not to be compared to property.

"Our modern system of jurisprudence is a survival of mediaeval times, when judges presided by right of ownership of lands and castles, and it will require another political revolution similar to that of 1776 and that of 1860 to abolish this bulwark of special privilege and capitalist exploitation.

"In feudal slavery the courts sustained the feudal lords, in chattel slavery they protected the slave owners, and in wage slavery they defend the industrial masters.

"Whoever protests for the sake of justice or in the name of the future is an enemy of society and is persecuted or put to death.

"In one of the most eloquent characterizations of history Charles Sumner, tracing the march of the centuries, pointed out that the most infamous crimes against the liberty and progress of the human race had been sanctioned by the so-called courts of justice.

"This case is a mere incident in the mighty struggle of the masses for emancipation. Slowly, painfully, proceeds the struggle of man against the power of Mammon. The past is written in tears and blood. The future is dim and unknown, but the final outcome of this world-wide struggle is not in doubt. Freedom will conquer slavery, truth will prevail over error, jus-

tice will triumph over injustice, the light will vanquish the darkness, and humanity, disenthralled, will rise resplendent in the glory of universal brotherhood."

Warren's Second Speech.

In Warren's St. Paul speech he followed up this damning arraignment of class-courts and class-rule by still more specific charges. It was not Warren, but capitalist legal procedure, which stood accused in the dock. Said Warren:

"The question involved in this case is whether there is one law for the workingman and another law for the rich employer. The Supreme Court's decision in the famous kidnapping conspiracy in Colorado and the action of high government and state officials in protecting a fugitive Republican politician, charged with murder, lends color to my contention that there is one interpretation of the law for the poor and another for the rich. The action of the Governor of New Jersey in refusing to issue requisition papers for Armour, the Chicago meat packer, who was charged by the New Jersey prosecutors with violating the anti-trust laws of that state is a convincing argument that there is one law for the poor man and one for the rich.

"By environment, training and economic interests, the judges who compose this court are opposed to me. You can no more impartially consider the questions involved in this case than could the judges appointed by the English king to consider impartially the questions which arose between that monarch and his American subjects.

"In all controversies that arose between the master and his slave prior to the rebellion of 1861, the federal courts made their decisions conform to the interests of the masters. It was from the slave owners that they derived their powers and held their positions. No man openly antagonistic to the slave power could hold a position on the federal bench.

"An examination of the decisions of this court—and your decisions are similar to those of all other federal courts—wherein the interests of the workingman conflict with the interests of the employer, is ample proof of the class character of the federal judiciary.

"As a militant member of the working class I frankly confess that I expect nothing from this court. A court of justice, so-called, which turns away a mangled working child empty-handed, in defense of capitalist class property against working class life and limb, is not apt to look with favor upon one in revolt against such shocking inhumanity and the system responsible for it.

"I know that this is the settled policy of this court. I understand why its decisions are in the interest of the employer and against the working man and working woman.

"You are serving those to whom you are indebted for your position and responsible for your power. I am simply trying to show to the working class of the world, which embraces a great majority of the population, the character of the federal court to which must be submitted their liberties and their lives. The federal court under capitalist misrule is essentially capitalistic in its sympathies, its interests and its decisions.

"In this important work of educating the working class as to the true character of the courts you are helping me. It was the Dred Scott decision that hastened the overthrow of chattel slavery, and, as history repeats itself, we may confidently expect that the decision of the Supreme Court in the now famous kidnapping conspiracy, backed by the federal court's decisions in all other labor cases, will precipitate the downfall of wage slavery. When the toilers of the mill, factory, mine and farm once understand the true situation, they will realize that there can be no relief from judicial despotism until they use the power latent in themselves to abolish the present iniquitous system, based upon the legalized robbery of the nation's toilers and producers, IN WHICH THE COURTS ARE MERE CREATURES OF CAPITALIST CLASS RULE AND INSTRUMENTS OF WORKING CLASS SUBJECTION. These workingmen will one day learn to choose their own judges, and while these judges may know little of the intricacies of law and the chicanery of technicality, they have an inherent sense of justice and they may be depended upon to serve their brothers.

"I shall consider it the proudest day of my life when I enter the jail at Fort Scott, imprisoned because of my defense of the poor and oppressed. You will by that act increase my power a thousandfold and carry my message to the toiling millions from sea to sea. Gladly will I make this small sacrifice in a cause to which I would willingly give my life."

Without doubt, Capitalist law has never before or since faced so damning an arraignment as this of Warren's. Mask and pretense were stripped clean away.

The naked machinery of class-rule was exposed to the eyes of the world. Goldsmith's famous verse,

"Laws grind the poor, and rich men rule the law"

was amply proved. And from the bench and robe were plucked dignity and power which can never be regained.

Additional Cases Of Class Law.

The only difficulty in the way of citing cases in point is the bewildering array from which to choose. Any complete list of decisions "Made in Dollardom" would fill volumes. I mention a few, at random. Let them serve as typical, in our consideration of "Socialism and the Law."

The massacre of the "Molly Maguires," in the Pennsylvania coal fields, in 1877, when seventeen miners were hanged by packed juries and on perjured evidence.

The Haymarket case in Chicago, when in 1887 four labor leaders, since proved innocent, were hanged by similar means, their real crime having been agitation in favor of the eight-hour day.

The Latimer and Homestead massacres, in 1897, when Sheriff Martin and 102 deputies shot down the miners wholesale, and escaped scot-free, under the protecting wing of capitalist law.

The innumerable and incredible brutalities and outrages practiced by courts, judges and military power in the labor-wars at Cripple Creek, Col., in Idaho and at Goldfield, Nev., all aided by anarchistic mobs of "respectable business men" under the aegis of Law.

The numerous peonage cases throughout the South, where Law and Capital have played into each other's hands to bind men into slavery and, if rebellious, to torture and murder them without compunction.

The shameless cases in which Mexican, Russian and other political refugees have been arrested, imprisoned and punished by our courts and, save for the prompt and vigorous protests of the working class, would have been returned to the clutches of their vindictive masters.

The innumerable trust deals and steals perpetrated on the American people, by and through the forms of law.

The mob-rule, under legal forms, in Tampa, Fla., 1910, where every constitutional right of the working-class was violated.

During the Cigar Makers' strike, in Tampa, a practical state of martial law existed. Hundreds of citizens were sworn in as special policemen, the Labor Temple of Tampa and the union hall were closed; safes containing the union records were seized by order of the court, were taken to the court house and held for investigation, and two strikers were lynched.

The many legalized murders at Lawrence, Paterson and other strike centers, and, together with these, the infamous sentencing of Pat Quinlan to the New Jersey penitentiary, on absolutely perjured evidence.

The assassination of free speech, by court injunctions, in dozens and scores of our cities, including San Diego, Seattle, Little Falls, Fresno and Spokane.

The setting aside of the famous "Big Fine" of $29,000,000 imposed by Judge K. M. Landis on the Standard Oil Company, and reversed by Judge Peter S. Grosscup.

The defeat, by Judge Pollock's injunctions, of the Kaw River Drainage Board's attempts to widen the river channel and obviate floods costing hundreds of lives and millions of dollars in aggregate small properties, at the expense of "made" land held by the huge packing-houses at Kansas City.

The overriding, by the Supreme Court of West Virginia, of the Constitutions of that state and of the United States, in the interests of the mine-owners, and the endless and incredible brutalities practiced on the miners, by "constituted authority," contrary to law. This West Virginia case, being still fresh in the public eye, deserves further mention.

Class Administration of Law, With a Vengeance.

The following provisions of the United States Constitution have all been violated by officials sworn to uphold that Constitution in West Virginia.

No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger . . . nor be deprived of life, liberty or property without due process of law.—Amendment V.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed. . . . Amendment VI.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.—Article 1, section IX, paragraph 2.

The right of the people to be secure in their persons, house, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . . Amendment IV.

. . . The right of the people to keep and bear arms shall not be infringed.—Amendment XI.

. . . Nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.—Amendment XIV.

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.—Amendment XIII.

The following provisions of the Constitution of West Virginia were all likewise violated, in dealing with the miners, by officials sworn to uphold that constitution:

The provisions of the constitution of the United States, and of this state, are operative alike in a period of war as in time of peace, and any departure therefrom, or violation thereof under the plea of necessity, or any other plea, is subsersive of good government,

and tends to anarchy and despotism.—Article I, section 3.

The privilege of the writ of habeas corpus shall not be suspended. No person shall be held to answer for treason, felony, or other crime, not cognizable by a justice, unless on presentation or indictment by a grand jury.—Article III, section 4.

No person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers.—Article III, section 10.

The military shall be subordinate to the civil power; and no citizen, unless engaged in the military service of the state, shall be tried or punished by any military court, for any offense that is cognizable by the civil courts of this state.—Article III, section 5.

Trials of crimes, and of misdemeanors, unless herein otherwise provided, shall be by a jury of twelve men, public, without unreasonable delay, and in the county where the alleged offense was committed. . . . Article III, section 14.

The courts of this state shall be open, and every person, for an injury done to him, in his person, property or reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial or delay.—Article II, section 17.

Such is a partial list of the legal malfeasances of the ruling class in this one case. After all, "What's the Constitution between friends?"

To such as still retain their old-fashioned respect for and admiration of the Supreme Court, as a body pure in motive, lofty in deliberation and impersonal in decision, I now recommend a careful reading of

Gustave Myers' "History of the Supreme Court." With which recommendation, I pass on.

Some Individual Cases.

Leaving now, though with its outlines hardly as yet sketched in, the larger aspects of the case, where masses of men and large properties have, in general, been involved, let us examine a few of the many thousands of cases where working-class individuals, suffering personal wrong and injury, have applied in vain to capitalist legal machinery for redress and compensation. I cite perhaps a thousandth of one per cent. of the cases on record, all essentially alike in this, that no deserving trust or capitalist ever has gone empty-handed from a court of law.

Flossie May Clements was a 17-year-old girl, working some time ago in the "Model Laundry" in Washington, D. C., for a pittance to support herself and widowed mother. Flossie worked at a mangle. She fed this monstrous machine from early morning till late at night, day after day, week in and week out.

One day Flossie's right hand was caught in the heavy machinery. She was hurried to a hospital. The doctors found that amputation was necessary. A few weeks later the girl was discharged cured, but absolutely helpless.

NOTE:—For a partial list of court decisions favorable to Capital and against Labor, see Appendix.

The young victim brought suit against the company for $20,000.

The case came to trial. When the girl was called to the witness stand she was asked by her attorney to exhibit her injury. She trembled, drew back the sleeve from her mangled arm and fell fainting.

She was carried out of the court room. The trial closed. Justice Barnard adjusted his glasses, cleared his throat, and began his charge to the jury.

"The plaintiff," said the learned judge, "was familiar with the operation and the dangers of the mangle. According to law she assumed the risk incidental to the operation of this machine, and the defendant is therefore exempt from all liability. You are instructed to bring in a verdict for the defendant."

The jury obeyed. The Law was vindicated. And Flossie? What became of her?

One thing is certain. Had that judge been a Socialist, the ancient and barbaric doctrine of "assumed risk," now said to be held only in Turkey and the United States, would never have been applied, and justice would have been done.

Another case, also of a factory girl, this time from New Jersey. Her arm was caught in the machinery and torn from the socket. A jury awarded her $17,500. The corporation appealed, and the Supreme Court reversed the verdict. The frightfully mutilated girl was turned out, penniless and helpless, on the streets.

On what ground did the august tribunal reverse this verdict? Here it is, as given by the Philadelphia *Evening Telegram,* Jan. 3, 1911:

"A photograph had been introduced in the trial. This photograph was the picture of the plaintiff in her confirmation dress, and the learned judge decided that it was irrelevant. Being irrelevant, it should not have been admitted, *and being admitted it nullified all the proceedings of the court bearing upon the negligence and responsibility of the company.*"

Indeed, "a Daniel come to judgment!"

Albert M. Dawson, a brakeman on the Rock Island, was killed by reason of a defective hand-hold on a freight car. The hand-hold had been screwed into rotten wood. It pulled out. Dawson fell under the wheels and was cut in two. The judge in the case—he traveled on a pass—instructed the jury to return a verdict for the railroad and against the widow; and this verdict was sustained by the higher courts. "Assumed risk," again. Ninety thousand railroad employees are killed or injured every year on American railways. Every railroad should ask itself with all seriousness: "Have we a little judge in our house?"

A Few More, Out Of Thousands.

The case of Mary Miller attracted wide attention. In 1910 she lost her fingers, while operating dangerous machinery in the plant of the St. Louis Cordage Co. A jury gave her substantial damages, but this decision was reversed by the U. S. Court of Appeals—though just how the case ever got to that august tribunal, nobody knows but the attorneys. Judge Sanborn ruled

that the plaintiff was not entitled to damages because "the danger was apparent, and the girl could have quit her job." The verdict of twelve citizens had no weight with this distinguished jurist. He heard "his master's voice," and came to heel with a neat "assumed risk" decision, safe, sane and strictly legal.

On Nov. 9, 1888, sixty-four miners were instantly killed by an explosion in a mine at Frontenac, Kansas. A large number of others were wounded. The mine company was patently responsible, through having neglected to provide the necessary safeguards. Seventy-five damage-suits were entered. These were fought for many years, taken to higher courts and continued till the plaintiffs were worn out. The final results to the miners' families were practically *nil.* Let two examples, from this case, serve for all.

James Wilson, aged 18, was killed. His father sued for $10,000. A jury awarded $5,000. From court to court the company carried the case, till finally it was able to compromise for a sum that did not even begin to cover the plaintiff's expenses.

Thomas F. Jones was injured and sued for $15,000. He was awarded $2,000. The Company delayed payment, till finally the victim died, in 1891. The widow continued the fight, but the case was dismissed in 1896. The plaintiff received not a red cent. Score one more victory for capitalist law administered by capitalist-minded judges!

A Contrast—and the Reason.

Frank Lane was a miner working in the district near Girard, Kansas. In 1910, while employed by the Sheridan Coal Company, he sustained injuries, due to defective equipment, rendering him a cripple for life. The fact of judicial partiality for the master-class and against the working-class having been established by an almost unbroken series of thousands of cases, Warren, editor of the "Appeal," and J. I. Sheppard, a Socialist attorney of Fort Scott, Kansas, determined to make this a test case. Their idea was to establish a precedent which would enable them to win in other cases that the "Appeal" legal defense department intended to prosecute. Action was taken to secure justice for this one of the *six hundred thousand workers* annually killed or injured in the United States. The complete story of this case, the dilatory and evasive tactics of entrenched capital sheltered behind class courts, cannot be told here, but after numerous subterfuges and delays, the Company was forced to settle for $11,000, and partial justice was done—so far as money can ever atone for a crushed, broken, paralyzed body.

The object-lesson was made clear, of what could be accomplished by determined Socialists, on the legal battle-field, in conflict with the fossilized and hide-bound courts of capitalism. The corporation that mutilated Lane sought to throw him headlong on the junk-pile of broken and forgotten things. Mammon

has no mercy, and the courts are Mammon's handmaids. Upon the shapeless wrecks that once were men, capitalist courts solemnly placed the great seal of approval, and from their imperial decree there is no appeal. None, save when Socialists stand forth to battle.

In the region near Girard, some 16,000 miners toil. Previous to the Frank Lane case, hundreds of suits were beaten by the coal companies. Now, thanks to Socialist activities, most of these cases are won by the injured miners or their heirs. The same results could be accomplished everywhere, if a sufficient number of Socialist lawyers were in the field.

Every year, for lack of Socialist lawyers, courts and judges, vast armies of industrial cripples are left to their unhappy fate. There is no pension for these wounded workers.

The doors of practically all our courts are closed against them; the judges deaf to their appeal.

And this monstrous social crime passes for civilization! These hundreds of thousands of men, women and children crushed and torn in the machinery of production to feed and clothe and shelter society, are themselves, in their tragic helplessness, starved to death by that same society.

Our Labor-Baiting Courts.

Not only do our capitalist courts, as at present constituted, form the strongest bulwark of property-

rights as against human rights, but they aggressively exceed the furthest extension of their alleged rights in baiting and persecuting Labor, all for the greater glory and power of Capital. Injunctions and sentences for contempt are their chosen weapons, in this unequal battle. And Labor, untaught, unversed, unskilled in the complex minutiae of the law, lies supine beneath this judicial tyranny, or, in blind fury, thrashes out to right and left with violence, which—like the unavailing struggles of fabled Antaeus—only serves to reduce it to still further impotence.

I cite a case in point, one of thousands. In January, 1911, Judge Greeley W. Whitford sentenced sixteen striking miners to jail for a year for alleged violation of an injunction issued by him at request of the Northern Coal & Coke Company of Denver, Col. These miners were not even in the jurisdiction of his court. He issued the injunction, put them in jail and from his decision there was no appeal. The miners had violated no law and had committed no crime. They were neither tried nor found guilty. The corporation ordered this judge to jail them to break their strike. Sixteen innocent workmen were accordingly imprisoned for one year, without trial, by the decree of a judge, issued at the command of a criminal coal corporation.

In view of a fact like this, which is only one of an infinitude of similar injunction and contempt cases that might be cited, what, forsooth, becomes of our boasted "equality before the law" How many plutocrats have

been jailed for a year, for violating an injunction? How many are even enjoined, at all? Let Echo answer.

Judicial arrogance can go no further than in these cases, now growing numerous, wherein the judge—making his own law—sets aside the constitutional guarantee of trial by jury, cites persons for contempt, tries them and sentences them, when he himself has a personal interest in their conviction. The judges have proclaimed "We are higher than the law or the Constitution," and all who question it are liable to suffer grievous consequences.

Supreme Arrogance of Our Bench.

Saliently now stands forth the fact, long recognized by Socialists and at last coming to be admitted even by Old Party men, that in no civilized country on earth does any such arbitrary and dictatorial power exist as that actually assumed and exercised by our courts. The President of the United States, himself, is powerless before the majority of his own appointees, the Supreme Justices; while Congress is but a body of children who may play at "law-making" but who cannot go beyond the parental will of our nine Czars, with long gowns to dignify their rule.

Informed persons know that the federal judiciary, more, if possible, than the Senate, is owned by the ruling class and exists solely to do its bidding. Any law passed by Congress, antagonistic to the interests of the plutocrats, is immediately held by the Supreme

Court as unconstitutional. Any strike that bids fair to win victory is crushed by an injunction. Any measure or movement looking toward the betterment of the masses at the expense of the classes invariably finds its death at the hands of a federal judge.

Such judges, appointed by the President for life, can be removed only by death, resignation or impeachment. Within their sphere they are absolute; in recent years they have usurped powers and assumed a jurisdiction to which they are manifestly not entitled. They stand higher than all our law-making bodies, for they can declare unconstitutional or deny the laws after they are made. Once the Supreme Court has spoken, no more can be said. There can be no appeal from a Supreme Court decision. Thus the control of the Supreme Court by the plutocracy makes the plutocrats the rulers of our nation. The federal judiciary possesses a power not exceeded by that of any monarch on earth; and this power is used exclusively to further the interests of the rich and to degrade to greater depths the rank and file of the working class.

As men are formed and moulded by their environment, so that every occupation produces specialized types of bodily and mental modification—such as "miner's lung," "housemaid's knee," "clergyman's voice," "writer's cramp" and the like,—we now know and recognize a special type of intellect well-described as "lawyer's brain" or "judge's mind." This legal and judicial intellect has no connection with the realities or facts of life, the problems of humanity or such

trivialities as right and justice. It feeds exclusively on codes, precedents, objections, exceptions, writs of error, stays, habeas corpuses, mandamuses, injunctions and "nice sharp quillets of the law." It was once most beautifully summed up by Ex-President Taft in his remark: "I love the judges; I love the courts. They are my ideal on earth, and typify what we shall meet afterward in heaven under a just God." Speech at Pocatello, Ida., Oct. 6, 1911. He further voiced this sublime mental attitude in his speech at the Waldorf-Astoria, January 28, 1912, when he said: "In the effort to make the judiciary responsible to the whim of the people, I see destruction. The conservative element of the nation must eventually get together to prevent a movement that would make the courts the creatures of popular will, and might make the decision in every case not in accordance with the law but in accordance with what the majority of the people thought the law should be." Comment is superfluous.

I suggest the remedy proposed by Jefferson. Let Socialists operate for a joint Congressional resolution declaring that no court has any jurisdiction to declare an act of Congress or State Legislature unconstitutional and void on pain of impeachment, conviction and removal from office.

A Few Germane Examples of Commonsense vs. Legal Sense.

Earlier in this article I have already cited many instances to bear out the contention of class rule by

class courts. Nor are others lacking. They press upon our attention from every side.

The ease with which the United States Steel Corporation, in 1910, was enabled through the connivance of President Roosevelt and Attorney General Bonapart to absorb the Tennessee Coal and Iron Co. constituting a steal of over nine hundred million dollars, illustrates the facility with which property rights can work their will in this country.

When the American Tobacco Co., in and about 1907, formed a combination to lower beyond the subsistance point the purchasing price of tobacco, and the farmers united to pool their crops in an endeavor to force prices to a living standard, all the powers of law, courts and injunctions, backed by military force, were called out against the working class.

The famous Standard Oil case, when taken to the Supreme Court, resulted in the most amazing legal development of all—the famous, or rather, infamous, promulgation of the doctrine that the Court itself can, by interpolating words into the written law, modify that law, thereby actively assuming legislative functions.

Justice Harlan in a dissenting opinion, May 15, 1911, said:

"If I have not misapprehended the opinion, the court has not only read into the act of Congress words which were not to be found there, but has thereby done that which it adjudged in 1896 and in 1898, could not be done without violating the Constitution.

"But now the court, in accordance with what it denominates 'the rule of reason,' in effect inserts in the act the word 'undue,' and makes Congress say what it did not say, what it plainly did not intend to say and what since the passage of the act it has explicitely refused to say.

"It has steadily refused to amend the act so as to allow a restraint of interstate commerce that was reasonable or due. In short, the court now by judicial legislation in effect amends an act of Congress relating to a subject over which that department of the government has exclusive cognizance."

He still further said, in effect:

"Labor comes here and asks you to put something into the Sherman anti-trust law that Congress did not put in. Organized dollars speak for human greed. You grant the petition and upon the same day, almost in the same breath, you deny the identical request of labor. You have made the judge your legislator, and the legislator is against men but in favor of money."

Federal Courts—Department of Justice, forsooth! Justice! "Most excellent fooling!" Every one of the judges on the federal bench has been appointed through the influence of corporate wealth. Nearly all of them were previously in the service of the trusts and corporations as lawyers, and were placed upon the bench for no other reason than that they could render their masters more efficient service in that capacity. Every man of intellect knows and admits this fact. The reverence most people entertain for our capitalist courts is sadly out of place among a so-called free people. Such reverence is affected by the master-class for

prudential reasons, while upon the part of the masses it is born of ignorance concerning the judges and what is going on behind the scenes. The fictitious solemnity and dignity of the judges deceive no Socialist, for he can penetrate the mask.

Says Allan L. Benson, in "Pearson's" for December, 1911:

"Federal judges make our laws, in that they write all of them; in that they judge all of them after Congress has written them. No law that is brought into court can be administered until the federal judges have passed upon it, if any interested party chooses to have it so passed upon; until they have read words in or words out, as they like. Perhaps the federal judges kill it by declaring it unconstitutional.

"This is not rule by the people. It is rule by the judges. How can rule by the people be established if judges who are above the people are at liberty to do with the law as they please? This is a crucial question. Either we believe in rule by the people, or we do not. If we believe in rule by the people, we do not believe in rule by judges. And, if we do not believe in rule by judges we do not believe in an 'independent judiciary.'"

Said the "Appeal," in its issue for March 9, 1912:

"It is in the federal court that the workingman is always beaten and the corporation always victorious. The one greatest obstruction in the path of the nation's progress is the federal court. It is the last remaining bulwark of decadent Capitalism. . . . The American people, whether they will or not, will sooner or later be compelled to grapple with it . . . This autocratic, irresponsible institution, whose judges are nam-

ed by corporate wealth with a life-tenure of office, is beyond and above the reach of the people . . . is the very essence of despotism."

Implacably opposed to despotism in any form, and fully aware of the truth of the dictum that the law is a net that catches only the little fish, while the big break through, Socialists have given considerable attention to this form of tyranny. They have exposed not only the character of the law and the courts as a whole, but that, also, of the individuals who, graced by the black robe, are commonly supposed to belong to a superior class of beings, far removed from the contaminating touch of criticism. Judges, at their touch, have crumbled to common clay. The "Appeal to Reason," alone, has unseated several from the federal bench.

As a sequel to its judicial housecleaning, the "Appeal" initiated a movement for the popular election and recall of the judiciary, which has since been written into the Socialist platform and become widely popular. "Socialism and the Law" is not, after all, so abstract a question as at first blush might appear.

On the 22nd of October, 1910, the "Appeal," under the head of "The Treacherous Record of Congress Exposed," printed a complete analysis by Louis Kopelin, of the action of all Congressmen then in session, on the following issues: Eight Hour Law, Dick Military Law, Anti-Injunction Law, Sixteen hour day in railroad service, Child Labor Laws, Employer's Liability bill and several others affecting Labor. The vote of each Congressman on each of these several

questions was printed, and by an overwhelming majority the elected law makers of the people, theoretically their servants and representatives, were proved to have consistently worked and voted against the interests of their constituents.

For many years this paper has kept and published a record of the current doings of American courts, under the heading "Class Courts at Work." It has recorded thousands of cases of glaring injustice to the working class. This record is obviously too long to quote; but to one who, like myself, has studied it, it proves beyond the peradventure of a doubt the Socialist contention that our courts are maintained and "justice" administered solely in the interests and for the benefit of the ruling class. I invite all doubting Thomases to obtain and study this record, and then to affirm, if they can, that justice is free, impartial and untrammeled in this glorious land of ours.

Says W. J. Ghent, in a recent issue of the *"Survey":*

"The 'Appeal' has kept up an energetic and forceful campaign against the judiciary and has permanently singed many judicial reputations. It has started a movement which cannot help but grow. The conduct of the judiciary in so many instances these last ten years has provided all the necessary material."

Waning Divinity of the Bench.

As a result of all this irreverent exposure and analysis, the awful majesty of our courts and judges,

like unto that "divinity which doth hedge a king," is fast losing ground in America. The strings have been exposed, the guiding hand of Capital laid bare, and the puppet-dance of the judicial marionettes too clearly shown. Where none before dared criticise, now many carp and jibe; and the old-time warnings of Jefferson are once more becoming popular. With pleasure I quote these original admonitions of the "Father of Democracy," and follow his sage opinions with others which, now that Socialists have blazed the trail and have braved the shock of battle, are spoken less with courage than with a due appreciation of the trend of events.

Said Jefferson, in various public utterances and letters to his friends:

"You seem to consider the judges as the ultimate arbiters of all constitutional questions; a very dangerous doctrine, indeed, and one which would place us under the despotism of oligarchy. The Constitution has erected no such tribunal, knowing that, to whatever hands confided, with the corruption of time and party, its members would become despots.

"They have, with others, the same passions for party, for power, and the privileges of their corps. Their maxim is: 'It is the business of a good judge to extend his jurisdiction;' and their power is the more dangerous, as they are in office for life, and not responsible, as the other functionaries are, to elective control.

"The great object of my fear is the federal judiciary. That body, like gravity, ever acting with noiseless foot and unalarming advance, gaining ground step by step, and holding what it gains, is engulfing insidiously the special governments into the jaws of that which feeds them.

"The judiciary of the United States is a subtle corps of sappers and miners, constantly working underground to undermine the foundations of our confederated fabric. An opinion is huddled up in conclave, perhaps by a majority of one, delivered as if unanimous and with the silent acquiescence of lazy and timid associates, by a crafty chief justice (Marshall) who sophisticates the law to his mind by the turn of his own reasoning.

"And it is unfortunate that federalism is still predominant in our judiciary department, which is consequently in opposition to the legislative and executive branches and is often able to baffle their measures.

"I deem it indispensable to the continuation of this government that they (the judges) should be subjected to some practical and impartial control.

"No veto power, ancient or modern, ever existed so formidable as this American irresponsible judicial veto."

All this, long decades before the first injunction had been issued, the first trust formed, the first great labor war fought, the class struggle became apparent in America. Had Jefferson lived today, what, indeed, would he have said? I venture this, that no utterance of the Socialist would have excelled him in denunciation, nor any cry for the overthrow of our despotic legal system been more bitter.

If we look upon the partisan vote of the Supreme Court in the Tilden-Hayes presidential contest; at the appointment of two attorneys of the Pennsylvania Railroad Co., to that bench, to give the Greenback Decision in favor of the railroad companies; at the ma-

jority of one which reversed the will of the people in the Income Tax law; at the same power of one man which set aside null and void the Employer's Liability Act; at their restraining injunctions in labor cases, which every lawyer knows are outrageous violations of all precedent and existing law, and at innumerable other decisions, and all in favor of Mammon and against man, we must concur in his opinion. Jefferson's viewpoint, in the past, exactly coincided, in this respect, with that of the Socialists today.

The Socialist platform declares, in one of its important planks, for "the abolition of the power usurped by the Supreme Court of the United States to pass upon the constitutionality of legislation enacted by Congress." It also declares for the abolition of all federal courts inferior to the Supreme Court.

Leaving the Socialist contention for a moment to one side, consider now some non-Socialist testimony. C. P. Connolly says, in a recent number of *"Everybody's Magazine"*:

"The courts have been packed in order to render decisions favorable to certain corporations. Judicial opinions of our highest courts have been written in the offices of the legal department of railroads and other corporations. Corrupt federal judges use their power to loot prosperous concerns to the financial advantage of judicial rings. Many judges feel themselves high priests, and sincerely believe that all criticism of courts is unholy and heretical. Many are political henchmen with whom public morals are a cynical jest. They have pared and twisted the law for the protection of a fav-

ored few. This corruption of our courts pevdares every section of the country. It is becoming more and more difficult for the poor man to get a decision against a corporation. The influence of corporation lawyers over courts has demoralized the legal profession. Corrupt decisions have crept into the law and become part of it, and in some communities have poisoned the entire judicial system."

The *San Francisco Call,* September 13, 1909, thus unburdened itself:

"Down South, the 'Atlanta Constitution' and the 'New Orleans Times-Democrat' have been holding a sort of symposium of indignation and reproof concerning the strange quibblings of the ingenious Judge Gantt, of Missouri, who has made himself a figure of national derision by reversing verdicts of criminal convictions because of the missing of *the* in one case and a superfluous *e* in another. It is not, perhaps, impertinent to remark that these reversals came opportunely to the rescue of Missouri bribe-givers, who, but for the timely interposition of a 'higher up' power, would have been wearing stripes by this time."

And thus, the staid, slow-moving *"Outlook":*

"It will be conceded as a general proposition that lawyers do not reach the bench by assiduous study, high legal accomplishment and professional training. Political organizations have much more to do with their advancement than personal merit. The spectacle of the elevation to the judgeship of a lawyer known and appreciated by the bar is a rare one . . . In the main, the bench is below the average."

The essence of law was thus brilliantly summed up by Carl Snyder in a recent article in *"Collier's":*

"Do the judges know the law? Answer: The law

is what they think and they seldom think alike. Do the courts make the law? Answer: From the very beginning of the republic it has simply been a long struggle against usurpation by the courts of rights which they never possessed and never were intended to have."

The Morale Of Capitalist Lawyers.

Such being the case—and not even the most hide-bond reactionary can deny its essential truth—the Socialist necessarily views the *morale* of Capitalist courts and lawyers, and the codes of law as now generally administered, in a most unfavorable light. To him, one of the most desirable features of Socialism will be the purification of those codes and the lustration of the legal corps. He believes in free justice for all, in an orderly, legal and reasonable transformation of the present competitive state into the future co-operative state; and to him, therefore, the present weltering chaos of old, obsolete, contradictory, conflicting laws, for the most part inane and stupidly reactionary in their hampering clutch on the progress of humanity, becomes a thing despicable, and void of dignity or reason. He urgently demands its abolition in favor of a sane, simple, concise and reasonable code.

He sees the legal profession as it really is, an essentially dishonest, truckling, greedy struggle, a hair-splitting Tweedledum-and-Tweedledee conflict over property-rights, in which human rights are trampled under foot and lost sight of. He sees the modern law-

yer actually training himself to respect this travesty of democracy and right. He well knows that the average capitalist-minded lawyer is looking forward to the time when he himself may wield the autocratic sceptre of judgeship.

Such a lawyer, of the old school of things, learns to bow to precedent and to legal tyranny. He buries his head in the musty lore of legal practice. He lives in the past rather than in the present. He searches the hoary volumes of ancient decisions for justification of his clients, and he twists and turns facts to fit the obsolete conditions of forgotten generations. He sells himself for a fee. He prostitutes himself to his client with all the abandon of a courtesan, and his moral and intellectual integrity becomes that of the street.

No man can thus sell himself to Mammon without suffering moral and intellectual decay. He is seldom if ever revolutionary. True to his training, he must follow his dusty precedents. No capitalist-minded lawyer has ever led a great movement. Watch him in a convention; how he twists and turns the parliamentary procedure, how he lays traps for the innocent and unskilled delegates. Hear the cunning phrases that he inserts in his resolutions, phrases that seem innocent, but which are saturated with his poisoned art.

If the lawyers of ancient days resembled those of this twentieth century, no wonder Christ cried out, in anger: "Woe unto you also, ye lawyers; for ye lade men with burdens grievous to be borne, and ye yourselves touch not the burdens with one of your fingers."

The Approaching Change.

Socialists well know that this unjust, chaotic and criminal system of legal maladministration cannot much longer endure. They understand, with a clarity of vision not to be deceived by any specious argument, that the impending social transformation will involve a like, even a greater, metamorphosis in the field of law. It follows that they now eagerly invite the lawyer to a study of Socialist principles, and offer him in their ranks an unbounded field of endeavor.

For Socialist lawyers are today urgently needed; and as time passes, will be still more essential to the Great Change. This corps of workers is absolutely indispensable to the Socialist army, if victory is to be achieved and held. "The time is fast approaching when Socialists will be called upon to make and administer laws. We shall have to change our judiciary system, and deal with our legal machinery. Who is going to do this work? Shall we leave this to the old-school lawyers? The class-conscious Socialist jealously guards the integrity of the movement, and has a nervous eye on the entrance to our ranks of the merchant and the farmer. But in his guardianship he has wholly overlooked the most dangerous product of the capitalist system—the lawyer. Who was it that intermingled the warp of monarchy with the woof of democracy in our federal constitution? The lawyer. Who has been the conservative factor in all attempts at corralling the capitalist class? The lawyer. Whose hands thrust

the knife into the vitals of the People's Party? The lawyer.

Why is it thus? Because the legal mind is moulded by legal procedure, and is wholly devoid of innate human justice. Whence came our law? It is of two kinds, statutory and common. Statutory law is the product of legislation, and as our legislators for 120 years have been controlled by the capitalist class, the statutory law has been made for the protection and promotion of the interests of that class. The common law, which makes up the bulk of our practice, is the product of court decisions, which become precedents for subsequent courts to follow. If courts adhered strictly to precedent, their decisions might be governed by practices 200 years old, and thus modern capitalism might often be embarrassed; but as there is no hard and fast rule requiring such procedure, judges may follow precedent or not, as they choose. The capitalist class, therefore, is always sure of a favorable decision of the court, providing the court is chosen by the capitalist class, which is now everywhere the case. And it is precisely the court that rules the land. For legislatures may pass laws, but as we have already adequately shown, the courts decide whether or not such laws are constitutional and shall stand.

It follows that we need and urgently must have, trained in our own ranks and fully class-conscious, men skilled in legal procedure, to combat this evil influence, to engineer the mighty, yet delicate, transformation; to

scout our advance, checkmate the enemy's moves, and blaze our trail through the dense jungles of property-made law. Unless we know and understand the laws as they exist, we are not and shall not be able to take successful charge of the offices we shall soon be called upon to occupy. On our ticket, competent men are nominated for all offices save those requiring a knowledge of legal technique. Such nominations must either be left vacant, or men must be put up who make the ticket a jest, because the electorate well knows the nominees lack the requisite knowledge.

All these disabilities must be overcome before we can hope to be taken seriously as a political party. We cannot succeed as we should, so long as we must depend upon capitalist bench and bar for a construction of the law. Under such circumstances, the master-class is fighting with machine guns, while we are armed with clubs and javeline. Lacking our own law-corps, we enter battle with bound hands.

The members of the working class, arousing as they are from sea to sea, must themselves become the guardians not only of their party, but of the coming state. Our legal machinery cannot be mended; it must be thrown on the junk-pile, along with the entire capitalist system.

In the coming Socialist state, the people will make the laws, and once made, they will stand until the majority repeals them and makes others in their stead.

Socialists must fight the battle, and fight it hard and square. They must realize, once for all, that the

master-class is determined to hold its ground by all means, fair or foul, legal or illegal; and in the approaching battle, they must be prepared to meet violence with law, illegality with legality, fraud with exposure, and anarchy with order.

Some may question the truth of our position; but I affirm, and shall offer proofs, that Capitalism today neither respects its own laws nor—if threatened—obeys them. Its reverence for law is the merest simulacrum. At all hazards it is bound to rule; by law, if possible, if not, then by force. Prod the beast, and in its rage it tears to shreds the fabric of the very law under which it seeks to lie sheltered.

Every free-speech and free-press fight, every illegal jailing of editors and publishers of Socialist or labor papers, every "seditious libel" case, every capitalist deportation of workers, every military "Cossack" or mine-guard outrage, every "bull-pen" abomination, every illegal sentence, every judicial murder, every political refugee case, every act of mob-violence on the part of the masters—and these are legion—every disfranchisement, every petty theft of the workers' miserable property, every drop of proletarian blood shed on the industrial field or in rebellion against the Hell of capitalist exploitation, calls for instant action on the part of Socialist lawyers. Every threat, every anarchistic utterance on the part of Respectability calls for action, and at once, and with terrible urgency!

The plutocracy begins to perceive something of the trend of events, and calls on Congress to enact a

Dick Military bill, providing that every citizen between 18 and 45 may be called to arms and must respond, on pain of death. Congress compliantly obeys. Or, alarmed at the rapid spread of the Socialist press, it tries to pass a Penrose bill, providing that:

"When any issue of any periodical has been declared non-mailable by the post office department, the periodical may be declared non-mailable and excluded from second-class mail privileges at the direction of the postmaster general."

This neat press-muzzler fails to carry only because the Socialists take up the gage of battle and raise so threatening a storm-cloud that the alarmed "representatives of the people" run to cover.

An Otis feels his power slipping from him. Through his infamous "Times" (Nov. 2, 1911), he threatens: "And soon—it has begun to happen already—the plain citizens of the country will form a combine. Its object will be the suppression of sedition and anarchy in the persons of the professional agitators. Theirs will be a big, powerful, effective but very unostentatious revolt. It will work quickly, surely, silently. The first thing the plain citizen combine will accomplish will be the quiet removal of these gentlemen. They won't be blown up; they will just quietly disappear from human ken. There will be a little inquiry at first, but it will die down ever so quickly. . . . With the itch removed, the great disease of unrest will soon be cured, and the world will settle down for another half-century."

The New York "Journal of Commerce," the mouthpiece of the largest capitalist interests in the country, sees the handwriting on the wall, and with

utter disregard of existing law, urges a speedy move to disfranchise the working-class. The dike must be raised, forsooth, lest the floods of democracy invade the rich fields of special privilege. Well the masters know their last bulwark and citadel, the law, the courts, the judges!

Said the *Journal,* March 16, 1907:

"To guard against an eventuality, we should enact preventive laws before the power to do so has passed out of our hands. We should make it impossible to destroy the constitutional safeguards thrown around property-holders. If the Constitution could be so amended that its provisions relating to the right of the owner to his property could not be changed except by the vote of nine-tenths of all qualified electors, and if at the same time the expropriation laws were well defined and limited and the taxing power placed under reasonable restrictions, we should feel assured that we were reasonably well defended against the onslaughts of Socialism."

Less judicial in tone, yet in essence meaning the same thing, the Goldfield *Gossip* said, in January, 1908, at the time of the strike:

"It would have been better, perhaps, to have taken these men (union men) and hanged them as a warning to labor to content itself with talking, hereafter, and avoid action. . . . A cheaper and more satisfactory method of dealing with this labor trouble in Goldfield . . . would have been to have taken half a dozen of the Socialist leaders in the miners' union and hanged them all to telegraph poles.

"Speaking dispassionately and without animus, it seems clear to us after many months of reflection that you couldn't make a mistake in hanging a Socialist. He is always better dead. . . . . Always hang a Socialist,

not because he is a deep thinker, but because he is a bad actor."

Anarchy, cruelty and vice inconceivable, under the guise and mask of law, exist in a federal penitentiary. A Socialist editor and a Socialist lawyer take the matter in hand, turn on the light, force a government investigation, and effectually cleanse the Augean stables. The Leavenworth exposure, the retirement of Warden McLaughry and the dismissal of Deputy Lemon are all matters of easily-accessible record.

To save myself from any charge of having exaggerated the Capitalist viewpoint and its inherent lawlessness, if property rights be threatened, and to point out still more strongly the urgent necessity of a well-trained Socialist legal corps to meet that lawlessness, I quote a few choice gems from capitalist literature, with book, chapter and verse:

"Quitting work is criminal."—Taft, circuit judge, 54 Fed. Rep. 730, 1893.

"The people are not the source of power." Encycical.—Pope Pius IX.

"Undesirable citizens. Moyer, Haywood, Pettibone."—Theodore Roosevelt.

"What's the constitution between friends?"—Timothy Campbell of Tammany Hall.

"To hell with the people! What do I care for the people?"—Governor Gooding, Idaho.

"The Catholic church and the courts are the bulwarks between the mob and property."—Mark Hanna.

"Habeas corpus be damned! We'll give them post-mortems instead!"—Adj. Gen. Sherman Bell of Colorado militia.

What should a man do who is hungry and out of work? "God knows, I don't."—Wm. H. Taft, Cooper Union speech.

"The damn fools don't know what is good for them."—J. Pierpont Morgan, speaking of the striking steel workers in September, 1901.

"The supreme court stands next to divine authority as the rule of justice and right."—J. P. Morgan's personal newspaper, the *Sun*.

"Men who object to what they style 'government by injunction' are not in sympathy with men of good minds and good civic morality."—Theodore Roosevelt.

"The club is mightier than the constitution."—Inspector Schmittberger, of the New York police force in the riot in Union Square on March 28, 1908.

"To hell with the constitution!" Major McClelland, commanding the state militia (paid by the mine owners' association) during the Colorado miners' strike and lockout in 1904.

"The public be damned. I am not running this road for the benefit of the public. I am running it for my own benefit."—Cornelius Vanderbilt, of New York Central railroad.

"I see no solution for the problem until hunger compels capitulation."—Charles L. Eiditz, president of New York Trades Employer's association, during the lockout in July, 1903.

"I acknowledge no civil power. I claim to be supreme judge and director of the consciences of men. I am sole, last supreme judge of what is right and what is wrong."—Cardinal Manning.

"In a Republican district, I am a Republican. In a Democratic district, a Democrat. In a doubtful district, I am doubtful. But first, last and all the time I am for the Erie railroad."—Jay Gould.

"The rights and interests of the laboring man will be protected and cared for, not only by labor agitators, but by the Christian men to whom God, in His infinite wisdom, has given control of the property interests of the country."—George M. Baer, mine owner.

"The right of property rests not upon philosophical or scientific speculation or upon the commendable impulses of benevolence or charity nor yet upon the dictates of natural justice."—From the decision of the New York court of Appeals on Workingmen's Compensation. This court held the common law assumption to be that the worker assumes the risk of his employment, thereby blocking workingmen's compensation laws.

Why Socialists Should Study Law.

In view of statements such as these—and the list could be indefinitely lengthened—and also with due consideration for the trend of past and present events, no Socialist can deny that we stand today confronted by an urgent need of Socialist lawyers, legislators and judges. We have, at present, only a mere sprinkling of such men, a mere drop in the capitalist bucket. In all right and justice there should be more Socialist and working-class lawyers than all others combined, for they would represent a class which far outnumbers all other classes. Practicing before our bar, and sitting on our bench, they could and would interpret the law in accord with human life and sympathy, rather than in accord with cold and bloodless property-rights.

Law, in its development and present application, has lagged far behind the march of events. It still

lingers in the misty past of centuries dead and gone. Our marital and ecclesiastical laws are relics of Roman days. Our courts are ruled by masses of musty precedents, instead of by reason, right and justice. Yet, even so, we must understand and use the law as it is, before transforming it into what it should be; and on the actual ground of present-day law we must meet the capitalist class and beat them at their own game. Then, and only then, can we simplify and modernize our codes and so metamorphize them that they shall comfort and protect, instead of crushing and oppressing Labor.

We are being governed and controlled today by the rules established by a small body of constitutional delegates 125 years ago, when this country had neither machinery, manufacturing nor industrial workmen. Capitalist-made law protects and safeguards property to a point where it is almost impossible to tax it or to make it pay for the damages to life or limb which result in the course of its exploitation. Behind the imposing fortress of law Capitalism rules supreme.

The popular mind is today filled with fear, suspicion and hatred of the law and lawyers, of courts and judges. Under Socialism, if it be what we believe it will be, a wholly different character will pervade the profession, and the world will love, honor and respect it as the guardian of our liberties. One thing is certain; sooner or later we Socialists are going to take charge of this government. As a safeguard of peace and a guarantee of a quiet, legal, orderly change of

administration, we must educate a sufficient number of our own members, in the law, and do it by peaceful and lawful means.

With legal power in our hands, we can make a fact of democracy and of our Republic, in place of the specious, false and deceptive appearance of popular rule which has till now masked the reality of government by Gold. If majority rule is right, is it then just for a minority, composed of a few judges, to defeat the will of the majority? Capitalism could not stand an hour if the minority did not rule today. As the capitalist class is in the minority, so it must have some means of controlling the people, and that control is exercised through the courts. Our law-making system is wholly in violence of the Declaration of Independence, and to the provisions of the latter document the Socialists will rigidly adhere.

The simplest constitution is the best; the least complicated machinery of organization the most effective. The working class, with all whose material interest are kindred, has no complaint against the lawyer as an individual, but of lawyers as a class they are rightly distrustful.

Once we establish Socialist lawyers as a class, working with and in sympathy with the interests of the proletariat, the present hostility toward the profession will cease, and confidence will replace an only too just suspicion.

Socialists, clear-visioned and firmly grounded in fact, constitute the only class sufficiently intelligent, co-

herent and determined to offer any effective resistance to judicial tyranny, or to formulate any remedial measures. Our propaganda is swiftly spreading, and power is coming to our hands. In municipalities, counties, states, and in the nation, we need legal skill to guide us in the impending work of social administration. Capitalism foresees the issue, and is already at work raising the standards of admission to the bar. Many states have already enacted requirements practically prohibiting members of the working class from practicing law—some requirements even demanding a college degree as a prime requisite for admission to the bar. These barriers must be attacked and broken down, if the working class is ever to take any hand, save by the proxy of capitalist lawyers and administrators, in the making and enforcing of the law.

The Call to Action.

Most of the majesty and dignity of the law is mere poppycock, gendered by the purposeful aloofness, the "thunderings out of Sinai," of the ruling class and its legal retainers. Law is today, in fact, merely a code of haphazard guesses, backed by mystery and precedent. It should be in working class hands, and should be as simple as the Ten Commandments. Concerning these, no differences of opinion exist. They are plain, simple and explicit; and he who runs may read them.

So might the law be. So must it be, ere justice shall be done. The purposeful scheming of the propertied classes, to keep the making and administration

of the law in its own hands, must be met by the working class itself breaking into this profession in considerable numbers. Nor is it an impossible task, thus to unlock the postern of Capitalism and let the army of the workers enter into the citadel of power. Any man or woman of average intelligence, able to read and write the English language, can learn the essentials of the subject in no very great time.

Patrick Henry, the revolutionary orator, Henry Clay, "the mill-boy of the slashes," and Abraham Lincoln, the Illinois rail-splitter, all serve as eminent examples of men who made a marked success in the legal profession, in spite of having lacked every opportunity for an education, save such as they created for themselves. What these men did, others can do. And the spirit of the times calls loudly for action. It is the urgent duty of every Socialist to prepare himself for the oncoming charge.

Let me now recapitulate and summarize the situation, once for all, and make it as clear as type and paper can. Under a class government like ours, where every weapon available must be seized by the workers in their effort at self-emancipation, the study and practice of law becomes a matter of extreme importance. In practically every relation existing between the capitalist class and the working class, the issue of law is injected, and almost without exception the balance of power remains with the masters. Law and administration form today the strongest bulwark of class rule. So long as law remains "the mystery and possession of a

class, and not the heritage of all mankind," the workers will continue to find themselves at a tremendous disadvantage if they neglect to train members from their own ranks to function as lawyers and judges.

The necessity for Socialist lawyers arises constantly. In every election where the game of disfranchisement or ballot-stealing is attempted by the master class, working class attorneys are urgently needed. In every accident case where just compensation is evaded by black-robed capitalist-kept judges, the worker's interest must be defended by a Socialist lawyer. Contests for office, when Socialists are elected, and harrassing obstructionist tactics by capitalist opposition must be met and can only be met by the vigorous action of well-informed thoroughly qualified Socialist attorneys.

Every free-speech fight demands similar action. In rural districts, the defense of homestead titles, of pensions, patents and similar rights and privileges calls urgently for the services of lawyers working under the inspiration of the Socialist viewpoint. The proletariat, urban and rural alike, needs a corps of Socialist experts to explain, unravel and interpret for them the antiquated and bewildering legal complications which involve every personal and property right.

In the battle today being waged between the contending classes of society, the one supremely powerful weapon is the function of making, interpreting and enforcing the law. Beside this power, all others sink into insignificance. "Direct action" with its strikes and turbulence, becomes puerile by comparison. Political

power, if it does not include the control of the courts, grows impotent. Government today is being carried on by the capitalist class with the lawyer, the legislator and the judge as its tools. We have a government of the people, by the lawyers, for the trusts. Only a blind man can fail to see the vital importance of Socialists themselves taking possession of this all-controlling power, the law.

The legislator and the judge have today replaced the soldier and the priest as controlling forces in society. They constitute capitalism's ultimate bulwark against the encroachments of Socialism. Class rule could not continue an hour without the gowned aloofness of the courts. "Let me name the judges and I care not who rebels" might form an appropriate motto for the capitalist system.

These facts are so obviously patent to all Socialists that none should fail to heed the corollary: If we are ever to assume effective control of society, it must be through attaining control of the legal machinery of the land. Our own ranks contain little skill or talent along these lines. When we elect officials, we must for the most part employ capitalist lawyers to draft our bills and to conduct the complex process of legal procedure. Lacking lawyers and judges inspired by our ideals and dominated by our viewpoint, we run the risk of betrayal on every hand. We are enjoined, harassed and rendered impotent by the legal tools of capitalism; and as yet we possess neither skill nor technical knowledge to combat and overcome this sinister force.

The working class needs men competent to practice in every court and to sit on every judicial bench, from the lowest to the highest. We urgently must have hundreds and thousands of trained legal minds to take up and carry on the impending burdens of government and administration. Without this force, Socialism is merely riding to a fall. It cannot rule; it cannot hold such ground as it may win. Its charge over the barricade will be met by legal fusillades which will mow it down. For, in the arsenal of power, the law and the courts are at last resort the rapid-fire magazine guns.

Socialist lawyers! The call is imperative, the need urgent. For already the hour of responsibility is approaching. And if it finds us unarmed and unprepared, victory must wither to defeat and the long, bitter fight will have been fought in vain.

Socialists! Take up the weapon, the master-weapon of all, the law! Bind not your hands in sloth, nor your feet in futility. Arm yourselves—but not with weapons of destruction. Let the law be your shield and buckler, for in this sign shall you surely conquer.

Remember the clarion-call of Debs: "The days before us invite to action as never before. The field is dazzlingly attractive!" Remember again the words of Warren, when, persecuted and harrassed, he faced his black-gowned judges:

"Slowly, painfully, proceeds the struggle of man against the power of Mammon. The past is written in tears and blood. The future is dim and unknown,

but the final outcome of this world-wide struggle is not in doubt. Freedom will conquer slavery, truth will prevail over error, justice will triumph over injustice, the light will vanquish the darkness, and humanity, disenthralled, will rise in the glory of universal brotherhood."

Appendix.

Being a Partial List of Legal Decisions and Injunctions in Favor of Capital and Against Labor.

"Refusing to haul cars a conspiracy."—T., A. & N. M. Ry. vs. Pennsylvania Co., 54 Fed. Rep. 730, April 3, 1893. Taft, circuit judge.

"Quitting work is criminal."—Same, April 3, 1893. Taft, circuit judge.

"A workman considered 'under control.' "—T., A. & N. M. Ry. vs. Pennsylvania Co. et al., 54 Fed. Rep., 746, March 25, 1893. Ricks, circuit judge.

"Serving of injunction notice unnecessary."—In re Lennon, 166 U. S., 548. Brown, judge.

"The black-list lawful."—N. Y., C. & St. L. Ry. Co. vs. Schaffer, 65 Ohio, 41b, Jan. 21, 1902.

"Effort to unionize shop unlawful."—Lowe et al. vs. Lawler et al., 208 U. S., 274, Feb. 3, 1908.

"Contract work to union house is void."—State vs. Toole, 26 Mont., 22.

"Constitutional to require men to leave union."—People vs. Harry Marcus, 185 N. Y., 257, May 25, 1906.

"Union labor has no right to conduct a strike."—Alfred W. Booth & Co. vs, Burgess et al., 65 Atlantic Reporter, 226, Nov. 26, 1906.

"Unlawful to induce non-union men to quit work."—Enterprise Foundry Co. vs. Iron Moulders' union, 112 N. W., 685, July 1, 1907.

"The unfair list forbidden."—Wilson et al., 332 Ill., 389, Feb. 20, 1908.

"Employer has right to bar out unions."—Flaccus vs. Smith, 199 Pa. St., 128.

"Anti-Trust Act applies to Labor Unions as well as to combinations of capitalists."—U. S. vs. Workingmen's Amalgamated Council, 54 Fed. Rep. 994; Loewe vs. Lawlor, 208 U. S., 274.

"The boycott is unlawful."—Loewe vs. Lawlor, 208 U. S., 274.

"Members of Labor Unions liable to threefold damages for injuries in business or property sustained by individuals or firms by reason of a boycott."—Loewe vs. Lawlor, 208 U. S., 274.

"A combination of men to secure or compel the employment of none but union men is unlawful."—U. S. vs. Workingmen's Amalgamated Council, 54 Fed. Rep. 994.

"Unlawful to threaten a strike."—John O'Brien vs. People ex rel. Kellogg Switchboard & Supply Co., 216 Ill., 354, June 23, 1905.

"Effort to unionize a house is unlawful."—J. L. Purvis et al. Local No. 500 U. B. of Carpenters and Joiners, 214 Pa. St., 348, March 19, 1906.

"The boycott is unlawful."—Shine et al. vs. Fox Bros. Mfg. Co., 156 Fed. Red. 357, Oct. 19, 1907.

"Unions liable to suit for damages."—Leucke vs. Clothing Cutters' & Trimmers' Assembly, 77 Md., 396, Madch 16, 1893.

"The closed shop is illegal."—A. R. Barnes & Co. et al. vs. Berry et al., 156 Fed. Rep., 72, Oct. 21, 1907.

"Unlawful to ask reasons for discharge."—Wallace vs. Georgia, Carolina & Northern Ry. Co., 94 Ga., 732, June 18, 1894.

"Blacklisting cannot be prohibited."—Wisconsin ex rel. Theodore Zillner vs. Louis Kreutzberg, 58 L. R. A., 748, May 9, 1902.

"Maintaining a picket is unlawful."—A., T. & S. F. Ry. Co. vs. Gee et al., 139 Fed. Rep. July 10, 1905.

"Cannot limit hours of labor by law."—Holden vs. Hardy, 169 U. S., 366, Feb. 28, 1898.

"Payment in checks legal."—Kentucky court of appeals, Avent-Beattyville Coal Co., Appt. vs. Commonwealth of Kentucky, Dec. 1, 1894.

"Employer has a right to discharge a union man."—Wisconsin supreme court, State of Wisconsin ex rel. Theodore Zillner, Plff. in error, vs. Louis J. Kreutzberg, 58 L. R. A., 748, May 19, 1902.

"Eight-hour day unconstitutional."—Nebraska supreme court, Charles G. Low, Plff. in error, vs. Rees Printing Co., 24 L. R. A., 702-708.

"Eight-hour law illegal."—Ohio supreme court, City of Cleveland, Plff. vs. Clements Bros. Construction Co., 59 L. R. A., 775.

"Protection of laborers illegal."—Colorado supreme court—Re Thomas A. Morgan, 47 L. R. A., 52, July 17, 1899.

"Limiting check payment unconstitutional."—Indiana supreme court, Nathan G. Dixon, Appt., vs. James H. Poe, 60 L. R. A., 308, Nov. 25, 1902.

"Unlawful to fix wages by law."—New York supreme Court, People ex rel. Wm. J. Rodgers, Respt., vs. Bird S. Coler, Appt., 166 N. Y., 52 L. R. A. 814.

"Protection of laborer not required."—New York court of Appeals, Sarah Knisley, Respt., vs. Pascal P. Pratt et al., Appts., 148 N. Y., 362; 32 L. R. A., 367.

"No extra pay for extra hours."—New York court of appeals, People, Respt., vs. James H. Phyfe, Appt., Jan. 17, 1893.

"Employer not responsible for death of employe." —Circuit court of appeals, eighth circuit, March 19, 1900. Westland vs. Gold Coin Mines Co., 101 Fed. Rep., 59, 64, 65 and 66.

"Labor check payments are legal."—Massachusetts supreme judicial court. Commonwealth of Massachusetts vs. Josiah Perry. 14 L. R. A., 326.

"No remedy for labor except personal suit"—Massachusetts supreme court. Dianah Worthington et al., Appts., vs. James Warring et al., 157 Mass., 421.

"Employers need not furnish doctor to injured."— Massachusetts supreme judicial court. Alexander Davis by next friend vs. William H. Forbes, 171 Mass., 548.

"Employers not liable for injuries."—Massachusetts supreme court. Wm. O'Mally vs. South Boston Gaslight Co., 158 Mass., 135.

"Altering contract is legal for employers."—Illinois supreme court. Richard Pamsey, Appt., vs. People of Illinois, 17 L. R. A., 853.

"Employers need not recommend satisfactory employes."—Illinois supreme court. C., C., C. & L. Ry. Co., Appt., vs. Charles Jenkins, 174 Ill., 398.

"Legal to jail a man a month without trial."—Oregon supreme court. Longshore Printing & Publishing Co., Appt., vs. George H. Howell et al., 26 Ore., 527.

"The right to blacklist upheld."—Kentucky court of appeals. John Hundley, Appt., vs. L. & N. Ry. Co., 105 Ky., 162.

"Any wilful attempt of employes of a railroad in the hands of a receiver to impede or hinder the operation of the road is contempt of court."—Thomas vs. C. N. O. & T. P. Ry. Co., 62 Fed. Rep. 803, Taft, circuit judge.

"To instigate a strike on a road in the hands of a receiver is unlawful and a contempt of court."—Thomas vs. C. N. O. & T. P. Ry. Co., 62 Fed. Rep. 803, Taft, circuit judge.

"A boycott is an unlawful conspiracy."—Thomas vs. C. N. O. &. T. P. Ry. Co., 62 Fed. Rep. 803, Taft, circuit judge.

"A sympathetic strike is an unlawful conspiracy by reason of its purpose, whether such purpose is effected by means usually lawful or otherwise."—Thomas vs. C. N. O. & T. P. Ry. Co., 62 Fed. Rep. 803, Taft, circuit judge.

"Any obstructing or retarding the mails by strikes is an unlawful conspiracy in violation of Section 3975, Revised Statutes, although the obstruction is effected by merely quitting employment."—Thomas vs. C. N. O. & T. P. Ry. Co., 62 Fed. Rep. 803, Taft, circuit judge.

"A law forbidding discrimination against an employe because of his membership in a labor union, and making it a misdemeanor for an employer to discharge an employe because of membership in a labor union, is unconstitutional."—Adair case, 208 U. S. 161.